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Workmen's Compensation Decisions

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paying no attention to the unrecorded deed issued by him on foreclosure. Tax Deed issued and was recorded, likewise deed to plaintiff L. HELD: The holder of the tax certificate did all required of him when he delivered tax certificate to county auditor; the auditor performed his duty by delivering proper notice for service by sheriff; and the sheriff performed his duty by making personel service on the record owner in possession in full compliance with Section 2223, 1913 Laws; and that (dicta) any implied notice of different ownership would fail at crucial point of bringing knowledge of actual ownership.

Johnson Construction Co. vs. Austin et al. Defendant A purchased residence property of plaintiff for $8,000, payment to be: $1,000 cash, assumption of a $3,000 mortgage on the residence, and warranty deed to a quarter of land, free of incumbrance, transfers to be completed by Aug. 1, 1923. Upon exchange of abstracts title to the quarter was objected to, and bond in sum of $4,000 required and executed. The bond was conditioned upon a loan of $2,000 on the quarter section and the furnishing of good and sufficient deed by Jan. 1, 1924. Partial release of the bond was made when loan was completed. Some of the objections to the title were removed before Jan. 1, 1924, action brought in October, 1923, to quiet title as to others, and deed tendered Dec. 31, 1923. Deed was refused and action started on the bond. Upon trial defendants were found not to have cleared the title, and given until July 1, 1926, by the trial court to do so. HELD: That while time be not of the essence of a contract it may nevertheless be so material that protracted delay, without a showing of facts and circumstances sufficient to justify and excuse the delay, may prevent decree of specific performance. The demand for, and execution of, the bond, conditioned for furnishing title at a stated time, was sufficient indication of the materiality of the time element. Judgment reversed and cause remanded for determination of plaintiff's damages under the bond, "the measure of which is the same as for breach of any other contract."

WORKMEN'S COMPENSATION DECISIONS

Where special transportation is provided by employer, one who does not report for duty in time to take such transportation and is killed while walking to work is not injured in course of employment.—*McMahon vs. Mack, 222 N. Y. Supp. (N. Y.).*

An accident resulting from a cause brought onto the employer's premises by the workman himself for his own purposes is not caused by his employment, and is not compensable. In this instance the accident was caused by the breaking of steering gear of car on way home from work.—*Industrial Commission vs. Enyeart, 256 Pac. 314 (Col.)*

Where employer's general business was marketing sand and gravel, which was covered by Compensation Act, the mere fact that hay raised on alfalfa land which employee was raking when killed was fed to

horses used in operating sand and gravel beds did not entitle deceased's dependents to compensation.—*Ocean Accident Co., vs. Industrial Commission,* 256 *Pac.* 405 (*Utah*).

An employee is deemed to be acting "in the course of employment" whenever he is present and ready to obey orders, although, even for purposes of his own, he has temporarily ceased to work; hence an engineer on a dredgeboat, who, because, the engine room became too hot, went on deck and fell overboard, was entitled to award—*United Dredging Co. vs Lindberg,* 18 *Fed.* 453.

A milk handler in railroad yards, whose duty it was to remain at his car until all cans had been delivered to truckmen, left the car during hours of employment for reasons which could not be shown, and was killed by a taxicab. Compensation was denied the dependents on ground that injury in course of employment could not be sustained by presumptions.—*Norris vs. New York Ry. Co.,* 221 *N. Y. Supp.* 569 (*N. Y.*).

Where, after giving evidence its full probative force and effect, but none of the witnesses would go further than to say that it was possible, or perhaps probable, that primary cancer of which employee died was caused by copper or metal poisioning, the causal connection between the employee's work and the cause of death is left in such uncertainty that compensation must be denied the dependents.—*Falco's Case,* 156 *N. E.* 691 (*Mass.*).

A 36-year-old daughter, not physically or mentally incapacitated, and her two illegitimate minor children constituted family or employee killed in course of employment. Held that daughter was not dependent within the terms of the compensation act, but the minor children were, the deceased having on occasions declared that he would take care of the children and not ask the father of said children "for one penny."—*Carter vs. Templeton Coal Co.,* 156 *N. E.* 518 (*Ind.*).

Compensation will be denied for incapacity which may be removed or modified by operation not involving serious suffering or danger, if workman unreasonably refuses to submit; but refusal on part of employee, who had compound fracture of bones of leg, to consent to amputation until just prior to death, though advised that amputation was necessary to save life, is not such unreasonable refusal as to "constitute intervening cause of death."—*Utah Copper Co., vs. Inlustrial Commission,* 256 *Pac.* 397 (*Utah*).

Employee, who had seen doctor two days before alleged injury, complaining of pain in stomach and nausea, testified that a bar was wrenched out of his hands and raked downward across chest and abdomen. No one saw accident, or noticed change in appearance or manner of doing work, which he continued to do for about six weeks when doctor discovered hernia. The Commission's ruling that it was not conclusively established that hernia was the result of injury was sustained.—*Tometz vs. Biwabik Mining Co.,* 213 *N. W.* 897 (*Minn.*).

Widow of workman who was killed in course of employment filed claim with the Industrial Commission, which was subsequently withdrawn and suit brought against a third party alleged to be liable. Suit was unsuccessful, and a new claim presented to the Commission. The Commission's disapproval of the claim was sustained because claimant had barred the insurer of its valuable right of subrogation, a right that insurer should be enabled to have determined "in its own way and through its own agents and attorneys".—*Ocean Accident Co., vs. Cooper,* 294 *S. W.* 248 (*Texas*).

THERE MAY BE A BILL

We frequently wonder why so many bills, concerning matters of apparently minor import to the general public, get into our legislative hoppers, and wonder still more why there is such heated discussion about them. The case of Pipan vs. Aetna Insurance Co., reviewed elsewhere in this issue, appears to carry foci of infection for the development of legislative germs of that type.

In that case an insurance company collected the usual premium or premiums for the insurance of a certain building, duly described, existing, and apparently of sufficient value to justify the amount of the insurance requested. A policy was issued and delivered through the local agent. The owner and her husband could read little or no English. The building was destroyed by fire during the life of the policy. It was then discovered that the policy was not made out to the record owner, and, presumably, that policy carried the usual provision that it would be void if the interest of the insured was other than that of sole and unconditional owner.

The issue as to whether the mistake of placing the wrong name on the policy was due to the carelessness of the agent or his office girl, or was due to lapse of memory or actual mistake on the part of the plaintiff and her husband, was decided against the plaintiff on the theory of failure to sustain the burden of proof. The insurance was, therefore, held to be uncollectible, and the only recourse open to the owner — after the fire — seems to be a demand for refund of the premium or premiums paid.

Whether the weight of authority supports the rulings of the trial and appellate courts or not, there is presented here a situation that will be unexplainable to large numbers of people, including many of wider experience, better knowledge of our language, and more extensive education than the parties interested. They will, very likely, refuse or be unable to see any equity or fair dealing in such a determination. The matter will be discussed with friends and neighbors, and then someone will get the bright idea — that of passing a general law to prevent the repetition of such a result. Lo, we prophesy.

COMBATTING THE CRIME PROBLEM

Herewith is quoted the concluding part of an address on the subject, "The Crime Problem from a Layman's Standpoint," delivered at the annual communication of the Grand Lodge A. F. & A. M. of North Dakota:

"If, in the capacity of the blind endeavoring to lead the blind, I